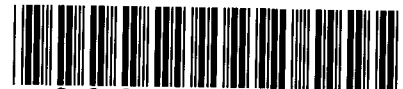


ORIGINAL

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE, Chairman
SANDRA D. KENNEDY
PAUL NEWMAN
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BRENDA BURNS

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AZ CORP COMMISSION
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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, L.L.C., DBA JOHNSON
UTILITIES COMPANY FOR AN INCREASE IN
ITS WATER AND WASTEWATER RATES FOR
CUSTOMERS WITHIN PINAL COUNTY,
ARIZONA.

DOCKET NO. WS-02987A-08-0180

**SWING FIRST GOLF LLC
COMMENTS ON PROCEDURE**

Swing First Golf LLC ("Swing First") hereby comments on the Commission's procedure to resolve the "Petition to Amend Decision Pursuant to A.R.S. §40-252" filed on February 28, 2011, by Johnson Utilities, LLC ("Johnson").

Swing First believes that Chairman Pierce has crafted and the Commission has approved a reasonable procedure to resolve Johnson's Petition. As Swing First understands the procedure, Commission Staff will draft an amended order that would provide substantial relief for Johnson, including adding back over \$18 million in wastewater plant to rate base. The net effect would be to increase Johnson's combined revenue requirement by approximately \$2 million per years. The Commission would then vote whether to approve, modify, or deny the draft order, with the vote currently anticipated to take place at the Commission's scheduled September 6 and 7, 2011, Open Meeting.

If approved by the full Commission, there will be something in the Chairman's carefully crafted compromise for almost everyone. Johnson will add \$2 million per year in revenues. The resulting revenue increase will still be less than originally recommended by Staff, RUCO, and the Hearing Division. Customers will benefit by a rate-filing moratorium and delayed rate increases.

1 Sadly, there is nothing for Swing First. Swing First filed its complaint in January 2008,
2 over three-and-one-half years ago. Swing First intervened in the rate case docket and is
3 responsible for bringing Johnson's deplorable environmental record to the Commission's
4 attention. Swing First was also the only party to provide evidence concerning Johnson's
5 multiple, serious billing and customer-service issues. As discussed at the August 11, 2011, Open
6 Meeting, the record of Johnson's environmental and customer-service misdeeds provided
7 additional reasons for the Commission to approve the punitive measures imposed on Johnson in
8 Decision No. 71854. Yet, now that passions have cooled and memories have faded, the
9 Commission proposes to commute Johnson's sentence. And Swing First—Johnson's
10 uncompensated victim—has been completely forgotten.

11 To remind the Commission of the enormity of Johnson's abuse of Swing First, the story
12 needs to be briefly retold. There can be no doubt – Johnson tried to put Swing First out of
13 business.¹

14 **I GENERAL BACKGROUND**

15 David Ashton has worked hard all his life and always tried to do things the way he was
16 taught by his parents, his teachers, and his church. He graduated from Brigham Young
17 University in 1995 with degrees in International Relations and Chinese. In 2000, he earned a
18 Master's Degree in Business Administration from Stanford University. Mr. Ashton is married
19 and has four beautiful children: two girls and two boys.

20 Like many of his Stanford peers, Mr. Ashton is an entrepreneur. He wanted to be his
21 own boss and start a business. He founded Swing First Golf LLC, developed a business plan,
22 lined up investors, and borrowed money to purchase the Johnson Ranch Golf Club in Queen
23 Creek, Arizona. He would have been successful, except for one unfortunate fact – the Johnson
24 Ranch Golf Club was in Johnson's water and wastewater CC&N.

¹ The facts in this story have been thoroughly established, briefed and footnoted, in the rate case. To spare the Commissioners, Swing First will omit further footnotes in this summary.

1 Like any Arizona golf course, Swing First's course requires large amounts of water to
2 irrigate the grass and other vegetation. Swing First also requires water to fill the golf-course lake
3 located at Swing First's 18th-hole fairway. Adequate, timely deliveries of irrigation water are
4 absolutely critical for Swing First's golf course. Without water, the grass and other vegetation
5 would rapidly die in the dry desert heat. No one could play the course, and Swing First would be
6 quickly out of business. The harm would not have been limited to Swing First. The values of
7 homes in the Johnson Ranch subdivision would plummet, particularly those located directly on
8 the golf course.

9 **II EFFLUENT DELIVERIES**

10 Until March 2006, Johnson provided Swing First's irrigation requirements with raw
11 water from the Central Arizona Project Canal ("CAP Water"). This is raw water originally from
12 the Colorado River that can be treated and delivered for human consumption. Then, in March
13 2006, Johnson completed its Santan Wastewater Treatment Plant and began delivering Class A+
14 treated effluent from the plant to Swing First. Johnson has also sold treated effluent from the
15 Santan Plant to the San Tan Heights Homeowners Association.

16 Class A+ treated effluent is wastewater that has been treated and purified, but cannot be
17 used for human consumption. It is also less expensive than CAP Water. Because it conserves
18 water that could be consumed by humans and is less expensive, Class A+ treated effluent is ideal
19 for irrigating golf courses and other green spaces. For these reasons, it has long been the
20 Commission's policy that utilities should deliver all available treated effluent for golf-course and
21 other irrigation needs, before delivering precious ground water or CAP water.

22 After the Santan Plant went on line in March 2006, Johnson had the ability to supply all
23 of Swing First's irrigation requirements with low-cost, environmentally-preferable treated
24 effluent. Johnson has produced far more effluent than it has actually sold, selling only about
25 42% of the effluent that it has produced since March 2006.

1 Unfortunately for Swing First, from December 2006 through early 2008, Johnson
2 violated Commission policy, withheld treated effluent, and forced Swing First to purchase more
3 expensive and less desirable CAP Water. Only after Swing First finally filed a formal complaint
4 with the Commission did Johnson start delivering meaningful quantities of effluent.

5 **III OASIS MANAGEMENT SERVICES**

6 In April 2006, Swing First agreed to manage the Golf Club at Oasis ("the Oasis"), which
7 was owned by another company controlled by George Johnson. Mr. Ashton prepared a
8 Management Agreement which outlined the scope of services that Swing First would provide for
9 the Oasis. Mr. Ashton signed the agreement and presented it to Mr. Johnson. Mr. Johnson said
10 that he never signed agreements but that his handshake would demonstrate his acceptance. Mr.
11 Ashton and Mr. Johnson shook hands and Swing First began providing management services for
12 Oasis in accordance with the Management Agreement.

13 Mr. Johnson said that for business purposes, it would be advantageous for him to pay
14 Swing First by providing free irrigation water. The parties agreed that Johnson would provide
15 Swing First with a water credit of 150 million gallons per year in exchange for Swing First
16 managing his course.

17 Johnson then provided the agreed-upon water credits for six consecutive months.
18 Johnson would send Swing First a bill, with the understanding that no payment was required.
19 Presumably, the Oasis or another Johnson affiliate was paying Swing First's bill. Swing First
20 did not pay for any irrigation water and the next-month's bill would show no past-due amount.

21 Swing First discontinued the Oasis management relationship on Nov 16, 2006,
22 retroactive to October 31, 2006.

23 **IV JOHNSON'S CAMPAIGN TO DESTROY SWING FIRST**

24 **A Illegal Billing Rates**

25 After Swing First discontinued providing management services for the Oasis, Johnson
26 began—for unknown reasons—a campaign to put Swing First out of business:

1. Johnson retroactively billed Swing First for irrigation water that it previously considered paid-for. This water had been previously provided to pay for Swing First's management services for the Oasis Golf Course.
2. Johnson's retroactive billing rates far exceeded the lawful tariff rates for CAP Water and Effluent. Johnson charged \$3.75 per thousand gallons for CAP Water instead of the lawful rate of approximately \$0.83 per thousand gallons. Johnson charged \$0.83 per thousand gallons for Effluent instead of the lawful rate of \$0.62 per thousand gallons.
3. As discussed above, Johnson began withholding Effluent and instead delivered more expensive, less environmentally-desirable CAP Water.
4. For irrigation water delivered after October 2006, Johnson also charged \$3.75 per thousand gallons for CAP Water instead of the lawful rate of approximately \$0.83 per thousand gallons. Johnson also charged \$0.83 per thousand gallons for the tiny amounts of Effluent delivered instead of the lawful rate of \$0.62 per thousand gallons.
5. Johnson began charging minimum bills each month for both the CAP Water and Effluent Accounts, even though Swing First no longer needed or desired CAP Water.
6. Johnson's Effluent minimum bill was based on 6-inch meter instead of the installed 3-inch meter.

B Illegal Overcharges

There were four accounts originally at issue between Swing First and Johnson: the two old CAP-Water and Effluent Accounts and the two new CAP-Water and Effluent Accounts. Only the new CAP-Water Account remains generally at issue.

In sworn testimony given at the Commission, Johnson's Executive Vice President Brian Tompsett stated that: "From time to time during the years 2004 through 2007, clerical and software errors occurred in the rates charged by Johnson for CAP Water and effluent delivered to

1 Swing First.” To correct these errors, Johnson testified that it provided Swing First various
2 account credits. Johnson further testified that after its provision of refunds, the balance owed by
3 Swing First for all but one account was zero.

4 Johnson testified that the only account presently in dispute between Johnson and Swing
5 First is Account No. 00119200-02, the new CAP-Water account. Johnson also testified that for
6 consumption from November 1, 2006 through June 20, 2007, it charged \$3.75 per thousand
7 gallons instead of the lawful rate of just \$0.82 per thousand gallons – an enormous overcharge. .

8 Johnson admits that the new CAP account is the only account in dispute between the
9 parties. Johnson also admits that it overcharged Swing First for CAP Water for eight months.
10 Johnson does not dispute that the cumulative overcharge as of July 1, 2007, was \$97,505.43.
11 Yet, to offset this huge overcharge, Johnson has provided only a paltry \$ 8,382.34 credit.

12 Johnson has also failed to compensate Swing First for deliberately withholding less
13 expensive Effluent and for its minimum-bill overcharges.

14 **C Illegal Water Shut-Off**

15 Johnson refused to correct its billing errors and then compounded its refusal by twice
16 illegally shutting off irrigation service to the golf course. Only the intervention of the
17 Commission Staff prevented Johnson from destroying the Golf Course.

18 Swing First could not pay Johnson’s wildly inflated irrigation bills. In November 2007,
19 Johnson twice shut off service, using the phony past-due \$97,000 balance as its pretext. Mr.
20 Tompsett admitted to Staff Counsel Robin Mitchell that Johnson completely disregarded the
21 Commission’s rules for shutting off service:

22 Q. And you would agree with me that this series of exchanges really doesn't comply
23 with what is required for termination notices by Commission rule?

24 A. Per the Commission statute we looked at, no.

25 To keep Johnson from destroying the Golf Course and to buy time to get to the bottom of the
26 phony charges, Swing First was forced to file first an informal complaint and then an informal
27 complaint with the Commission.

1 **D Deliberate Golf Course Flooding**

2 As discussed, in 2007 Johnson essentially refused to deliver effluent to Swing First's golf
3 course. Concerning this and other issues, on Friday, January 25, 2008, Swing First filed a
4 formal complaint with the ACC.

5 Mr. Tompsett testified that Johnson received a copy of Swing First's complaint on
6 February 1, 2008. On that same day, Johnson began deliberately delivering huge amounts of
7 effluent to Swing First. The effluent deliveries continued for several days, which overflowed the
8 golf course lake and flooded the 18th fairway, rendering the hole unplayable.

9 Swing First begged Johnson to stop delivering effluent. Johnson's response was simply
10 outrageous. Mr. Tompsett sent an e-mail to Mr. Ashton that clearly showed that Johnson was
11 deliberately retaliating against Swing First's complaint by flooding the golf course:

12 You have now filed a formal complaint with the Arizona Corporation
13 Commission alleging, among other things, service interruptions. You even
14 requested relief asking that 'The Commission to order Johnson to continue
15 providing service during the pendency of this matter'. We were served with that
16 complaint on Friday February 1, 2008. Now a mere 3 days later you now demand
17 that 'WE STOP THE DELIVERY OF WATER'. **Which way do you want it?**
18 (Emphasis in original e-mail.)

19 To add insult to injury, Johnson then charged Swing First for the effluent it had delivered
20 to flood the golf course.

21 **E Threatening Letter**

22 On February 2, 2009, Mr. Ashton filed written testimony on behalf of Swing First.
23 Among other things, this testimony discussed Johnson's environmental record, its improper
24 billings, and how Johnson had mistreated Swing First.

25 On February 9, 2009, Johnson sent a letter to multiple members of Swing First Golf LLC.
26 Johnson threatened to sue the members for defamation if they did not proactively try to stop
27 Swing First from further pursuing its cases at the Commission. The letter was clearly intended to
28 intimidate Swing First members from supporting Swing First's participation in this rate case. It
29 also disparaged Mr. Ashton's character and impugned his integrity.

1 **F Defamation Lawsuit**

2 From January through June 2007, Utility charged the San Tan Heights Homeowners
3 Association 3.75/1000 gallons for Effluent instead of the lawful rate of just \$0.62/1000 gallons.
4 As Utility's overcharges were of mutual interest, Mr. Ashton discussed the overcharges with the
5 HOA. Utility retaliated by suing Mr. Ashton and his wife for defamation.

6 **V CONCLUSION**

7 Johnson seems to have genuinely tried to mend its past ways. It has terminated an
8 employee who may have been responsible for many of Johnson's past abuses. It has hired new
9 employees with strong track records in accounting, customer service, and environmental
10 compliance. It has reached out to the Commissioners and Commission Staff to try to mend
11 fences. However, talk is cheap – Johnson has to actually demonstrate that it rues its past
12 transgressions and then what is necessary to fully compensate the victims.

13 It may be that Mr. Johnson has received bad information and poor advice from a
14 subordinate. But, even if this is the case, it does not excuse Mr. Johnson from his responsibility
15 to repair the damage inflicted on Swing First as a result of that subordinate's activities.

16 Until Mr. Johnson directs his company to repair the damages it has inflicted upon Swing
17 First, his company does not deserve the relief it seeks from the Commissioners.

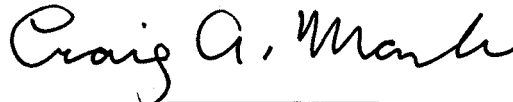
18 The Constitution requires the Commission to balance the interests of a utility and its
19 customers. It would strike an unfair balance to provide Johnson relief, while allowing its wrongs
20 against one of its largest customer to go uncorrected.

21 The Commission's next Open Meeting is scheduled for three weeks from today. The
22 Commission now has three weeks to learn whether Johnson is really trying to mend its past ways
23 or is just blowing hot air until it gets what it wants from the Commission. If Johnson has not
24 resolved all of its issues with Swing First by the next Open Meeting, then the Commission will
25 know the truth.

26 If Johnson has not resolved all its issues with Swing First by the September 6, 2011,
27 Open Meeting, then Johnson's Petition should not be heard at this or any future Open Meetings.

1 Alternatively, the Commission should adopt Swing First's suggested amendment that would not
2 allow new rates to go into effect until Johnson and Swing First have fully resolved their open
3 issues.

4 RESPECTFULLY SUBMITTED on August 16, 2011.

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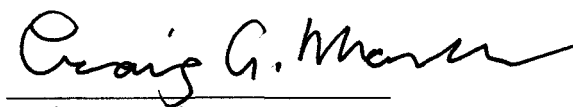
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